

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2000-130-C - ORDER NO. 2008-504

JULY 25, 2008

IN RE:	Agreement Between BellSouth	)	ORDER DENYING
	Telecommunications, Inc. DBA AT&T South	)	MOTION AND
	Carolina and Alltel Communications,	)	GRANTING
	Inc./Alltel Holding Corporate Services, Inc.	)	ADDITIONAL RELIEF
		)	

This matter comes before the Commission upon an Emergency Motion for Order Acknowledging Withdrawal of Amendment to Interconnection Agreement filed by Bellsouth Telecommunications, Inc. DBA AT&T South Carolina (“AT&T South Carolina” or “AT&T”). On May 28, 2008, the Hearing Officer assigned to this docket, the Honorable Joseph Melchers, issued a Directive granting the parties’ Joint Procedural Motion. This Directive provides that the record in this matter consists of: the interconnection agreement between Alltel Communications, Inc. (“ACI” or “Alltel”) and AT&T South Carolina that originally became effective August 29, 2004; the verified direct testimony of AT&T South Carolina witness Randy J. Ham and the five (5) exhibits thereto filed April 24, 2008; and the affidavit of ACI witness Charles Cleary and the four (4) exhibits thereto filed May 1, 2008. The Directive scheduled oral arguments for June 10, 2008.

The Commission heard oral argument in this matter on June 10, 2008 at 10:30 a.m. in the Commission’s hearing room. ACI was represented by Robert D. Coble and

Stephen B. Rowell. AT&T South Carolina was represented by Patrick W. Turner. The Office of Regulatory Staff was represented by C. Lessie Hammonds. During the argument, the Commission granted without objection AT&T South Carolina's request to take administrative notice of the pleadings, testimony, and Orders on file with the Commission in Docket No. 2005-399-C. See Joint Application of Windstream South Carolina, Incorporated (f/k/a Alltel Holding Corporate Services, Incorporated (AHCSI) and Alltel Communications, Incorporated (ACI) to Approve the Transfer of ACI's Authority to Provide Local Exchange Services to AHCSI, Grant AHCSI Certification to Provide Long Distance Services in South Carolina, and Approve the Transfer of Local Exchange and Long Distance Resale Customers from ACI to AHCSI. On June 16, 2008, AT&T South Carolina and ACI filed their respective Proposed Orders.

We have carefully reviewed the parties' submissions, the evidence of record, and the controlling law, and this Order sets forth our rulings in the matter.

#### I. BACKGROUND

AT&T South Carolina and ACI are parties to an interconnection agreement that originally became effective August 29, 2004. The interconnection agreement collectively addresses both the wireline services provided by ACI as a competitive local exchange carrier ("CLEC") and the wireless services provided by ACI as a wireless provider. When the original interconnection agreement became effective, ACI was certificated to provide (and did provide) wireline services in South Carolina. This Agreement was negotiated for the entire nine state BellSouth region and contemplated a specific balance of wireless and wireline traffic throughout the region.

Subsequent to approval of this agreement in 2004, Alltel elected to concentrate on its wireless and long distance businesses and to fully separate its wireline businesses into a separate entity not affiliated with Alltel. The newly formed separate entity was Alltel Holding Corporate Services, Inc. (“AHSCI”), which later became Windstream Communication, and that entity elected to adopt an existing interconnection agreement between BellSouth and DukeNet. See Docket No. 2000-29-C.

By letter dated February 28, 2008, AT&T South Carolina and ACI submitted an amendment to their agreement to the Commission pursuant to Section 252(e) of the Telecommunications Act of 1996. The amendment extends the interconnection agreement for a period of three years, and it provides that “EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.” As of the date the amendment was submitted to the Commission, ACI no longer was certificated to offer wireline services in South Carolina because its certificate to do so had been transferred to an affiliated entity. See Order Granting Expedited Review and Approving Application, In Re: Joint Application of Alltel Holding Corporate Services, Incorporated (SHCSI) and Alltel Communications, Incorporated (ACI) to Approve the Transfer of ACI’s Authority to Provide Local Exchange Services to AHCSI, Grant AHCSI Certification to Provide Long Distance Services in South Carolina, Order No. 2006-186 in Docket No. 2005-399-C at p. 9, ¶ 1 (March 28, 2006) (“the Alltel Transfer Order”).

On April 24, 2008, AT&T South Carolina filed an Emergency Motion for Order Acknowledging Withdrawal of Amendment to Interconnection Agreement. AT&T South

Carolina's Emergency Motion, which is supported by verified testimony, states that at the time AT&T South Carolina signed the amendment, it mistakenly believed that ACI remained a certificated CLEC in South Carolina. AT&T South Carolina claims this mistaken belief was based on: prior statements by ACI that were inaccurate at the time they were made and that were not subsequently corrected by ACI; and ACI's failure to comply with the notice provisions of Section 9.2 of the General Terms and Conditions of the interconnection agreement. AT&T argues that under the circumstances, it should be allowed to withdraw the amendment so that the parties would be in the position they had occupied prior to execution of the amendment.

Further, Section 3.1 of the Interconnection Agreement, which deals with Interconnection Compensation, reads in part:

Should Carrier opt into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation with respect to Carrier's CMRS or CLEC Carrier's CLEC local traffic, the bill and keep arrangement provided for under this Agreement shall be subject to termination or renegotiation as deemed appropriate by BellSouth.

ACI opposes AT&T South Carolina's request to withdraw the amendment. ACI states that AT&T had actual knowledge of its transfer of its CLEC operations and some of its CLEC certificates. ACI explained that applications had been filed in many state commissions disclosing and seeking permission for the CLEC operations transfer and further that because CLEC business collocated in AT&T offices, purchased numerous circuits from AT&T, resold AT&T lines, and purchased AT&T UNEs, that AT&T was involved in the transition of the CLEC operations to Windstream and cannot logically claim lack of knowledge or notice. ACI also pointed out that, with respect to South

Carolina, the Alltel CLEC authorization transferred to Windstream Communications in July 2006 and that such was reflected in the Commission's publicly available order earlier that year. Alltel also pointed out that the April 24, 2007 e-mail from AT&T witness Randy Ham included in its filing, expressly referred to the transfer of CLEC operations and some CLEC certificates. ACI pointed out that Mr. Ham was indicating at that time in 2007, that it was AT&T's position that because Alltel discontinued its CLEC operations and transferred some authorizations, it should no longer operate under the Interconnection Agreement and a new agreement was appropriate. However, Alltel alleged that AT&T reversed this position through later correspondence and merely demanded CLEC certification to extend the Interconnection Agreement per the Merger Commitments. Alltel explained that it did not provide AT&T with any proof of CLEC authority, but AT&T executed the Second Amendment to extend the Interconnection Agreement.

Alltel further argues that the Merger Commitments, entered into between BellSouth and AT&T at the time of their merger, required AT&T to agree to the Second Amendment extension of the Interconnection Agreement and that AT&T has not shown default under such agreement that might allow it to terminate the Interconnection Agreement. The Merger Commitments that were entered into by AT&T and Bellsouth state that any carrier may extend any existing interconnection agreement in force at the time of the merger for a period of three years. These Merger Commitments were intended to reduce the costs associated with the negotiation and approval of the

interconnection agreements. See In re AT&T, Inc. and Bellsouth Corp. Application for Transfer of Control, 22 FCC Rcd 5662, ¶ 22, Appendix F at 5809 (2007).

## II. DISCUSSION

First, although we understand the basis for AT&T's Emergency Motion is that it mistakenly believed that ACI was a certificated CLEC in South Carolina at the time of submission of the Second Amendment to the Interconnection Agreement, this stated basis is not relevant to the operation of the Merger Commitments. It is clear that under the Merger Commitments, AT&T was required to agree to the Second Amendment extension of the Interconnection Agreement with ACI, extending that agreement for three years, and that AT&T has not shown default under such agreement that might allow it to terminate the agreement. The Merger Commitments required AT&T to agree to the Second Amendment. Accordingly, the Emergency Motion must be denied.

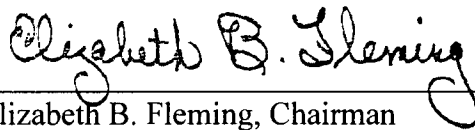
The Second Amendment, however, also included language that the agreement itself would remain unchanged and in full force and effect. Section 3.1 of the Interconnection Agreement discussed the fact that the bill and keep arrangement provided for under the agreement is subject to termination or renegotiation as deemed appropriate by BellSouth, should the other carrier opt into another interconnection agreement with BellSouth which calls for reciprocal compensation with respect to the Carrier's CMRS or CLEC Carrier's CLEC local traffic. As stated above, Windstream Communications elected to adopt an existing interconnection agreement between BellSouth and DukeNet. Accordingly, AT&T South Carolina is entitled to renegotiate the Interconnection Agreement even though it has validly been extended.

### III. CONCLUSIONS AND ORDER

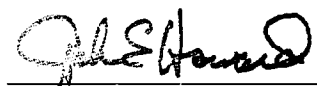
Based on the foregoing, it is hereby ordered that:

1. AT&T South Carolina's Emergency Motion for Order Acknowledging Withdrawal of Amendment to Interconnection Agreement is denied;
2. Under the Merger Commitments, Alltel is entitled to the three year extension of the existing agreement. The February 28, 2008 amendment to the agreement is approved.
3. Because of the dissolved relationship between Alltel Communications and AHCSI/Windstream Communications and AHCSI/Windstream's adoption of the DukeNet Agreement, AT&T South Carolina is entitled to renegotiate the agreement even though it is validly extended.
4. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
Elizabeth B. Fleming, Chairman

ATTEST:

  
John E. Howard, Vice Chairman

(SEAL)